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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,829	04/02/2004	Michael D. Wall	22187.00	8875

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EXAMINER
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KENNEDY, JOSHUA T

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/815,829	<b>Applicant(s)</b> WALL, MICHAEL D.	
	<b>Examiner</b> Joshua T. Kennedy	<b>Art Unit</b> 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-18 is/are pending in the application.
- 4a) Of the above claim(s) 4,6,7,13, and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,5,8-12 and 15-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Claims 1, 5, 8-12, and 15-18 have been examined.

Claims 2 and 3 have been cancelled.

#### ***Election/Restrictions***

Applicant's election of Species I in the reply filed on 1/24/2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 4, 6, 7, 13, and 14 have been withdrawn.

#### ***Claim Objections***

Claim 15 is objected to because of the following informalities:

Lines 10-12 and Lines 25-27 repeat the same language within the claim, thus one of the two groups should be removed. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 8-12, and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brema et al (US Patent 4,498,660) in view of Elflein et al (US Patent 3,363,386).

As to Claims 1, 8-11, and 15. Brema et al disclose a barrier system for use with pre-existing fence posts comprising:

a first fence panel having a first end and a second end and a height (Fig 5; Examiner considers the left side of the post (9) to be the first panel);

a second fence panel having a first end and a second end (Fig 5; Examiner considers the right side of the post (9) to be the second panel), and a height, said height of said second fence panel being substantially equal to said height of said first fence panel;

a cavity (8) being coextensive with said height of said respective first fence panel and second fence panel (Fig 5; Examiner considers the cavity formed by the ends (3a and 3b) in combination to be coextensive with the height of the panels), and is dimensioned and configured to circumscribe an exterior surface of a pre-existing fence post;

a post cap (13) releasably secured to each of said pre-existing fence posts

a first releasable attachment structure disposed on said first fence panel and said first end of said second fence panel and extending approximately one-half the height of said first fence panel and said second fence panel (Figs 1 & 2);

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said second end of said first fence panel and said second end of said second panel being designed and configured to be interconnected and extending approximately one-half the height of said first fence panel and said second fence panel (Figs 1 & 2); and

whereby a plurality of first and second fence panels are connected alternately by said first ends and said second ends (Fig 4).

However, Brema et al do not disclose at least one connector projection (first releasable attachment structure) of said first fence panel matingly engaging a respective said at least one connector slot (second releasable attachment structure) of said second fence panel or the cavity being formed between each said first end of said first said second fence panels.

Elflein et al disclose a connection for a force fit and sliding fit of adjacent structural members having at least one connector projection (13) of said first fence panel (11) matingly engaging a respective said at least one connector slot (14c) of said second fence panel and the cavity being formed between each said first end of said first said second fence panels to "form a hollow space in which a coupling element, for example a tube, can be introduced, thereby to form a rigid joint" (Col 2, Lines 22-25). It would have been obvious to one of ordinary skill in the art to modify the the first and second releasable attachment structures of Brema et al to have the mating connections forming a cavity therebetween as taught by Elflein et al each approximately one-half the height of said first and second fence panels, respectively, to form a hollow space

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extending the full length of the fence panels in which a coupling element, for example a tube, can be introduced, thereby to form a rigid joint invisible from outside with low strength factors when subjected to thrust, tension or bending stresses.

As to Claims 5 and 12. Brema et al disclose each panel being horizontally corrugated (Fig 5).

As to Claim 16. Brema et al disclose a panel (1). The applicant is reminded that patentability determination of product-by-process claims is based on the product itself, which in this case is solely the panel, even though such claims are limited and defined by the process. See MPEP § 2113. "The patentability of a product does not depend on its method of production. " In re Thorpe, 777 F.2d 695,698,USPQ 964,966 (Fed.Cir.1985).

As to Claim 17. Brema et al disclose fasteners for attaching the second end of said first fence panel to a third fence panel (Fig 4; Examiner considers the post (9a) as a fastener to attach the second end of the first fence panel to the third fence panel which continue on the left side of the post (9a), according to the figure).

As to Claim 18. Brema et al disclose fasteners for attaching the second end of said second fence a fourth fence panel. (Fig 4; Examiner considers the post (9c) as a

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fastener to attach the second end of the second fence panel to the fourth fence panel which continue on the right side of the post (9a), according to the figure).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment, specifically the addition of "said at least one connector projection of said first fence panel matingly engages a respective said at least one connector slot of said second fence panel" in Claims 1, 9, and 15, necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 6,609,702 to Steffes cited to show a post cap.

US Patent 6,877,721 to Calverley cited to show a similar corrugated fence where the corrugation is vertical rather than horizontal.

US Patent 4,329,079 to Milding cited to show similar coupling that could be releasably attached to a fence panel and to an existing fence post.

US Patent 3,704,861 to Glaesener cited to show a corrugated rail for a fence.

US Patent 4,962,914 to Taylor cited to show a fence utilizing a dovetail with corresponding slot for a connection between a fence post and rails.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua T. Kennedy whose telephone number is (571) 272-8297. The examiner can normally be reached on M-F: 7am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JTK  
2/9/2006

A handwritten signature in black ink that reads "Daniel P. Stodola". The signature is fluid and cursive, with the first name "Daniel" and last name "Stodola" clearly legible.

DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600